

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED - CLERK
U.S. DISTRICT COURT
2005 AUG -5 AM 11:11
TX EASTERN - LUFKIN

PEGGY WILLIAMS

v.

FARMERS NEW WORLD LIFE
INSURANCE COMPANY

§
§
§
§
§
§

CIVIL ACTION NO.

BY _____

9:05cv164

NOTICE OF REMOVAL

Defendant Farmers New World Life Insurance Company ("FNWL") files this notice of removal pursuant to 28 U.S.C. sections 1441 and 1446, and would respectfully show as follows:

Commencement and Service

1. On June 20, 2005, the Plaintiff commenced this action against FNWL by filing the Plaintiff's Original Petition in No. C215662005; *Peggy Williams v. Farmers New World Life Insurance Company*; In the 145th Judicial District Court of Nacogdoches County, Texas.¹ FNWL received service of the original petition on July 6, 2005.²

2. FNWL has filed an answer.³

3. This notice of removal is filed within thirty days of receipt of the original petition and is timely filed under 28 U.S.C. section 1446(b).

Grounds for Removal

4. FNWL is entitled to remove the state court action to this Court pursuant to 28 U.S.C. Sections 1332, 1441, and 1446, because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diversity of citizenship.

¹ See Plaintiff's Original Petition, attached as Exhibit A.

² See Citation for Personal Service, attached as Exhibit C.

³ See Defendant's Original Answer, attached as Exhibit B.

Diversity of Citizenship

5. This is an action between parties with diversity of citizenship. The Plaintiff is a citizen of Texas.³ FNWL is a corporation duly incorporated under the laws of Washington with its principal place of business located at 3003 77th Ave. SE, Mercer Island, Washington, 98040-2867.

Amount in Controversy

6. Despite the fact that the Plaintiff did not state a dollar amount of damages sought or affirmatively aver that she is seeking damages in excess of the minimum jurisdictional amount for federal court, it is readily apparent from a reasonable analysis of the Plaintiff's allegations that the amount in controversy in the action exceeds the sum of \$75,000.00.

7. In the Fifth Circuit, a defendant who is served with a pleading requesting an indeterminate amount of damages has two options. The defendant may either remove the case immediately if it can reasonably conclude that the amount in controversy exceeds \$75,000.00, or the defendant may wait until the plaintiff expressly pleads that the amount in controversy exceeds that amount or serves some "other paper" indicating that the amount in controversy exceeds that amount.⁴

8. If the defendant chooses to remove the case immediately, the federal court may, in determining the amount in controversy (1) look to the defendant's removal papers, (2) make an independent appraisal of the amount of the claim or suggest that the defendant is free to do so, or (3) remand the case.⁵

³ See Exhibit A.

⁴ See generally *Chapman v. Powermatic, Inc.*, 969 F.2d 160, 161-63 (5th Cir. 1992).

⁵ See *id.* at 163, n.6.

9. ~~If this Court makes an independent appraisal of the amount of Plaintiff's claim in~~
this case or relies on Defendant's removal papers, the Court will conclude that the amount in controversy exceeds \$75,000.00.⁶

10. If is facially apparent from the Plaintiff's Original Petition that she seeks more than \$75,000.00 in damages.⁷ The Plaintiff has alleged that FNWL breached its contract by failing to pay her the proceeds of Cedric Williams' ("Williams") life insurance policy. The principal of Williams' life insurance policy is \$100,000.00.⁸ The Plaintiff is seeking additional damages for negligence, fraud, breach of duty of good faith, alleged violations of Chapter 541 of the Texas Insurance Code, and attorneys' fees.⁹ Thus, the amount in controversy requirement is satisfied.

11. Under sections 1441(a) and 1446(a) of Chapter 28 of the United States Code, FNWL was required to remove this action to the Eastern District of Texas, Lufkin Division, because the Plaintiff filed the state court action in this judicial district and division.

Notice

12. FNWL will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. section 1446(d). FNWL will also file with the clerk of the state court and will serve upon the Plaintiff's counsel a notice of the filing of this notice of removal.

Information Required by Local Rule 81

13. Pursuant to Local Rule 81, the following documents are attached to this Notice:

Exhibit A: a copy of all pleadings that assert causes of action;

⁶ See, e.g., *Marcel v. Pool Co.*, 5 F.3d 81, 84-85 (5th Cir. 1993) (holding that remand was properly denied where it was "facially apparent" from the complaint that damages could easily exceed the court's jurisdictional limits).

⁷ See *Maley v. Design Benefits Plan, Inc.*, 125 F.Supp.2d 197, 199 (E.D. Tex. 2000).

⁸ See insurance policy no. 007127753 attached to Defendant's Original Answer as Exhibit A, and incorporated herein by reference.

⁹ *Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 536 (5th Cir. 1990) ("[A]ttorney's fees may be included in determining jurisdictional amount.").

Exhibit B: a copy of all answers to such pleadings;

Exhibit C: a copy of all process and orders served upon the party removing the case to this court; and

Exhibit D: information regarding the case and parties as required by local rule CV-81.

WHEREFORE, Defendant Farmers New World Life Insurance Company, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. section 1446, removes this action, Cause No. No. C215662005, *Peggy Williams v. Farmers New World Life Insurance Company*, from the 145th Judicial District Court of Nacogdoches County, Texas to this Court.

Respectfully submitted,

By: 

Deana F. Freeman
TX Bar No. 24027172
Fed. Bar No. 27314

711 Louisiana, Suite 2300
Houston, Texas 77002-2770
Telephone: (713) 223-2300
Facsimile: (713) 221-1212

Attorney-in-charge for Defendant


Of Counsel

Kristin A. McLaurin
TX Bar No. 24043813
Bracewell & Giuliani LLP
711 Louisiana, Suite 2300
Houston, Texas 77002-2770
Telephone: (713) 223-2300
Facsimile: (713) 221-1212

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded by Certified Mail, Return Receipt Requested to the following counsel of record on this 4th day of August 2005.

Mark A. Weycer
The Weycer Law Firm, P.C.
4545 Bissonnet, Suite 294
Houston, Texas 77401


Deana F. Freeman